



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2004

Sheriff J.B. Smith  
Smith County Sheriff's Office  
P.O. Box 90  
Tyler, Texas 75710

OR2004-1394

Dear Sheriff Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 199336.

The Smith County Sheriff's Office (the "sheriff's office") received a request for information detailing the account activity of the K-9 fund and "all documents referencing the serial numbers of [purchased] weapons, who purchased them and the number of guns purchased." The sheriff's office states it has released some of the weapons information, and some of said information "may no longer be available due to the age of the referenced transactions which is greater than five years." The sheriff's office contends information relating to the K-9 fund is not public information subject to the Act. In addition to your comments and arguments, we also received comment from the requestor. *See* Gov't Code § 552.304. We have reviewed and considered all of the submitted comments and arguments.

Information that is subject to the Act, *i.e.* "public information," includes "information that is collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body." Gov't Code § 552.002(a). There is no question that the sheriff's office is a governmental body subject to the Act. Gov't Code § 552.003(1)(A)(i). The sheriff's office explains the Smith County Sheriff K-9 and Livestock account is funded entirely by private donations rather than public funds. Furthermore, the sheriff's office informs us the account

fund[s] the various animals used for various tasks and maintained by the Sheriff's Office. In particular, this fund is used to feed and care for several dogs used for tracking and detection of individuals and horses used in search

and rescue operations. The fund is also used to pay certain expenses such as training and meal reimbursements for inmates during [] search and rescue operations.

Finally, the sheriff's office contends the search and rescue functions funded by the K-9 account are not part of its official duties but rather are discretionary public services. For these reasons, it argues that information pertaining to the K-9 fund is not subject to the Act. We disagree.

While the sheriff's office asserts search and rescue functions are not part of its official duties, it makes no such assertion for its tracking and detection functions. The sheriff's office acknowledges "this fund is used to feed and care for several dogs used for tracking and detection of individuals." We conclude tracking and detection of individuals are clearly among the duties of the sheriff's office as a law enforcement agency. Furthermore, search and rescue operations involve animals housed in county facilities and participation of the sheriff and his deputies during the course of their employment with the county and as part of their work hours. Thus, such operations are considered transactions of official business. Hence, expenditures pertaining thereto are made in connection with the transaction of official business of the sheriff's office. We need not decide whether the expenditures, as the sheriff's office asserts, were expenditures of public monies or instead were private donations. In either case, the expenditures were clearly made in connection with the sheriff's office's transaction of its official business. Thus, we conclude information pertaining to the K-9 account constitutes "public information" subject to the disclosure requirements of the Act.

The sheriff's office asserts no exceptions under the Act for withholding the information at issue, nor did the sheriff's office comply with the requirements of section 552.301 of the Government Code with regard to the request. *See* Gov't Code § 552.301(e) (governmental body must submit copy of written request for information and specific information requested no later than 15<sup>th</sup> business day after date of receiving request). Consequently, the information is "presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. Accordingly, we conclude the information at issue must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

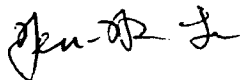
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 199336

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